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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,535	01/06/2004	Van Miller	1358-01	3319

58388 7590 02/01/2007  
GOWAN INTELLECTUAL PROPERTY  
1075 NORTH SERVICE ROAD WEST  
SUITE 203  
OAKVILLE, ON L6M-2G2  
CANADA

EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/01/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/751,535

Applicant(s)

MILLER, VAN

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The disclosure is objected to because of the following informalities:

In the specification, it is noted that letters are missing from the words. For example, on page 3 line 1 letters are missing from the words " whence, r, ar, derive d". Same problem is noted on page 5 lines 1-2, page 7 lines 1-2, page 8 lines 1-2, page 9 lines 1-2, page 11 lines 1-2, page 12 lines 9,15, page 13 lines 1-2, page 14 line 16, page 15 line 1, page 16 line 1, page 17 line 2.

Appropriate correction is required.

Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed on 1/8/07, applicant amends claim 1 to include the limitation of " an un-fractionated by product"; this limitation does not have support in the original disclosure. The specification does not disclose that the baking ingredient is an un fractionated by-product.

Claims 1-4, 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaudhary.

Chaudhary discloses a high dietary fiber product. The product is produced by drying brewer's spent grain. The high dietary fiber product comprises 70% fiber, 5.8% crude fat and about 20% protein. The product is used to prepared extruded food product such as raisin bran and is used in amount of 25%. The product is also used in

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baked products such as bread in amount of 15%. ( see col. 1 lines 50-59, col. 2 lines 21-31 and col. 3 lines 3-10, and table 1)

Chaudhary does not disclose the source of grain from which the spent grain is made, the addition of water, the pH as claimed and the product as cited in claims 8-9.

It would have been obvious to choose the spent grain from any known source and all the cereal grains claimed are well known in the art. As to the additional components, the product of Chaudhary is obtained from spent grain which is the same source of material as claimed; thus, it is obvious the components are the same. If the components are not the same, it would have been obvious to one skilled in the art to fractionate the spent grain to obtain fractions having any selected additional components such as minerals, amino acid and lysine depending on the nutritional status desired. This would have been within the determination of one in the art. The product of Chaudhary is added to baked product; thus, it would have been obvious to add water to the product to hydrate it thereby facilitating its addition to the baked product. The amount of water added depends on the product made and the amount of fiber product added; this can be determined by one skilled in the art through routine experimentation. Since the product is obtained from the same source as claimed, it is obvious the initial pH is the same as claimed because the specification does not disclose adding anything to alter the pH. Chaudhary discloses using the fiber product in baked products; thus, it would have been obvious to add the fiber to any baked product including cookie, muffin, waffle and nutri-bar when wanting to make baked products having a high fiber content. Since the fiber product is from the same source as claimed, it is obvious it possesses

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the property of having reduced glycemic index. As to the product being un-fractionated, this is a difference in the way the additive is obtained which does not determine the patentability of the product.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaudhary in view of Rasco et al.

Chaudhary does not disclose the pH of the additive which is adjusted using sodium bicarbonate.

Rasco et al disclose product produced from dried distillers' spent cereal grains. They teach to adjust the pH of the product to neutral in the pH range of 5-8 so that the product is not sour or acidic ( see col. 2 lines 39-43, col. 4 lines 25-26)

It is obvious that the additive of Chaudhary has the initial acidic pH as claimed because it is the same additive as claimed. As shown by Rasco et al, acidic pH will give the product a sour taste or acidic taste which makes the product organoleptically unacceptable. Thus, it would have been obvious to neutralize the pH to make a more appealing product. It would have been obvious to use any source of alkali and sodium bicarbonate is a well-known alkali to use in food product; thus, such usage would have been obvious to one skilled in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 31, 2007

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*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*